



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-HQ-ES-2022-0134; FF09E21000 FXES1111090FEDR 232]

RIN 1018–BG93

Endangered and Threatened Wildlife and Plants; Possible Effects of Court Decision on Significant Portion of the Range Analysis for the Northern Distinct Population Segment of the Southern Subspecies of Scarlet Macaw

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; notification of additional analysis and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are seeking public comment on how recent case law on the Service’s significant portion of the range (SPR) policy and the plain language of the Endangered Species Act (Act) may affect our February 26, 2019, final rule designating the northern distinct population segment (DPS) of the southern subspecies of scarlet macaw (*Ara macao macao*), as a threatened species under the Endangered Species Act of 1973, as amended (Act).

DATES: We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments submitted electronically using the Federal eRulemaking Portal (see

ADDRESSES, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<https://www.regulations.gov>. In the Search box, enter FWS-HQ-ES-2022-0134, which is the docket number for this rulemaking. Then, click on the Search button. You may submit a comment by clicking on “Comment.”

(2) *By hard copy*: Submit by U.S. mail to: Public Comments Processing, Attn: FWS-HQ-ES-2022-0134, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Request for Public Comments**, below, for more information).

FOR FURTHER INFORMATION CONTACT: Bridget Fahey, Chief, Division of Conservation and Classification, Ecological Services Program, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–2171). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

In response to a petition for rulemaking, on July 6, 2012, we published in the *Federal Register* (77 FR 40222) a proposed rule to list as endangered under the Act (16 U.S.C. 1531 et seq.) the northern subspecies of scarlet macaw (*Ara macao cyanoptera*) and the northern DPS of the southern subspecies of scarlet macaw (*A. m. macao*). That document also announced our finding that listing the southern DPS of *A. m. macao* as endangered or threatened was not warranted.

On April 7, 2016, we published in the *Federal Register* (81 FR 20302) a revised proposed rule that made changes to the July 6, 2012, proposed rule. Changes we proposed in the April 7, 2016, revised proposed rule included, but were not limited to,

revising our proposed listing of the northern DPS of *A. m. macao* from endangered to threatened and proposing to treat the southern DPS of *A. m. macao* and subspecies crosses (*A. m. macao* and *A. m. cyanoptera*) as threatened based on similarity of appearance. The proposed rule also included a proposed section 4(d) rule for the northern DPS of *A. m. macao*, southern DPS of *A. m. macao*, and subspecies crosses.

On February 26, 2019, we published in the *Federal Register* (84 FR 6278) a final rule listing the northern subspecies of scarlet macaw (*A. m. cyanoptera*) as endangered, the northern DPS of the southern subspecies (*A. m. macao*) as threatened, the southern DPS of the southern subspecies (*A. m. macao*) and subspecies crosses (*A. m. cyanoptera* and *A. m. macao*) as threatened due to similarity of appearance, and finalizing the section 4(d) rule.

In *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. Jan. 28, 2020) (*CBD v. Everson*), the Court vacated the provision of the “Policy on Interpretation of the Phrase ‘Significant Portion of Its Range’ in the ESA’s Definitions of Endangered Species and Threatened Species” (79 FR 37578; July 1, 2014), issued jointly by the Service and the National Marine Fisheries Service, which provides that if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

This Action

We are reexamining the SPR analysis for the northern DPS of the southern subspecies of scarlet macaw (*A. m. macao*). On August 29, 2022, the U.S. District Court for the District of Columbia granted our motion for voluntary remand without vacatur of the threatened finding and section 4(d) rule for the northern DPS of the southern subspecies of scarlet macaw (*Friends of Animals v. Williams*, No. 1:21-cv-02081-RC, Doc. 22). As submitted to and approved by the Court, we will reconsider our SPR analysis based on the plain language of the Act and the implications of *CBD v. Everson*,

and submit our findings to the *Federal Register* by March 28, 2023. If the SPR analysis determines that there are no significant portions of the range for the northern DPS of the southern subspecies of scarlet macaw, the SPR analysis ends the process. If the SPR analysis determines that one or more significant portions of the range exist but do not warrant endangered status, the SPR analysis ends the process. However, if the SPR analysis finds one or more significant portions of the range and finds the northern DPS of the southern subspecies of scarlet macaw should be listed as endangered instead of threatened, we will submit a proposed rule to the *Federal Register* by March 28, 2024, seeking public comment on the proposed reclassification of the northern DPS of the southern subspecies of scarlet macaw. Throughout this process, the February 26, 2019, final rule (84 FR 6278) remains in effect, including with respect to the threatened listing and section 4(d) rule for the northern DPS of the southern subspecies of scarlet macaw.

Request for Public Comments

We invite written comments on the manner in which the plain language of the Act and *CBD v. Everson* decision may affect our February 26, 2019, final rule designating the northern DPS of the southern subspecies of scarlet macaw (*A. m. macao*) as a threatened species. Specifically, we are interested in public input on whether and how the *CBD v. Everson* opinion affects the SPR analysis in the threatened determination.

We request comments from any interested party that pertain to the issues raised in the preceding paragraph only.

Public Availability of Comments

If you submit a comment via <https://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the web site. If you submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments on

https://www.regulations.gov. Comments and materials we receive will be available for public inspection at *https://www.regulations.gov*.

Author

The primary authors of this announcement are the staff members of the U.S. Fish and Wildlife Service's Branch of Delisting and Foreign Species.

Authority

This document is published under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 et seq.).

Martha Williams,
Director,
U.S. Fish and Wildlife Service.

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